



# Department of Justice

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AT  
(202) 514-2007  
TDD (202) 514-1888

## **QUALCOMM AND FLARION CHARGED WITH ILLEGAL PREMERGER COORDINATION**

### ***Communications Technology Companies Required to Pay \$1.8 Million Civil Penalty***

WASHINGTON, D.C.—The Department of Justice today announced a settlement with QUALCOMM Incorporated and Flarion Technologies Inc. that requires the companies to pay a total of \$1.8 million in civil penalties for violating premerger waiting period requirements.

The Department's Antitrust Division today filed a civil antitrust complaint in U.S. District Court for the District of Columbia, along with the proposed settlement that, if approved by the court, would resolve the lawsuit.

According to the complaint, after QUALCOMM and Flarion announced their July 2005 proposed merger, QUALCOMM obtained operational control over Flarion without observing the premerger waiting period requirement in violation of federal antitrust law.

"Merging parties must continue to operate independently until the end of the premerger waiting period," said Thomas O. Barnett, Assistant Attorney General in charge of the Department's Antitrust Division. "The Antitrust Division will vigorously enforce this requirement against any company that assumes operational control of a business that it is acquiring."

The companies' merger agreement required Flarion to seek QUALCOMM's consent before undertaking certain basic business activities, such as making new proposals to customers. Further, although not required by the agreement, Flarion sought and followed QUALCOMM's guidance before undertaking routine activities, such as hiring consultants and employees. The Department

said that such conduct, commonly known as “gun jumping,” violated the Hart-Scott-Rodino (HSR) Act of 1976.

The HSR Act requires companies planning acquisitions or mergers that meet certain threshold requirements to file premerger notification documents with the Justice Department and the Federal Trade Commission. The HSR Act also requires that the merging parties observe a mandatory 30-day waiting period, after which the companies may proceed with the transaction if neither agency has requested additional information about the transaction. The purpose of the waiting period is to give the antitrust agencies an opportunity before the parties merge to investigate proposed transactions and determine whether they would violate the antitrust laws. Parties are subject to a maximum civil penalty of \$11,000 per day for each day that they are in violation of the HSR Act.

QUALCOMM and Flarion executed their merger agreement on July 25, 2005. The HSR Act waiting period ended on Dec. 23, 2005. The amount of the penalty was reduced from the statutory maximum because the companies voluntarily reported the existence of gun jumping problems to the Department and took some measures to change their contract and their conduct, the Department said. The Department’s complaint does not challenge the underlying merger, which the companies announced they had consummated on Jan.19, 2006.

QUALCOMM is headquartered in San Diego. Flarion, now a subsidiary of QUALCOMM, maintains its principal offices in Bedminster, N.J.

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